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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2011-50

13 **LINDA DESTEFANO, RN**
14 **3 Coastal Oak**
Newport Beach, CA 92657

A C C U S A T I O N

15 **Registered Nurse License No. 389381**
16 **Nurse Practitioner Certificate No. 9775**
17 **Clinical Nurse Specialist Certificate No. 512**

18 Respondent.

19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
23 of Consumer Affairs (Board).

24 2. On or about August 31, 1985, the Board issued Registered Nurse License Number
25 389381 to Linda Destefano (Respondent). The Registered Nurse License was in full force and
26 effect at all times relevant to the charges brought herein and will expire on March 31, 2011,
27 unless renewed.

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3. On or about April 24, 1998, the Board issued Nurse Practitioner Certificate Number 9775 to Respondent. The Certificate expires on March 31, 2011, unless renewed.

4. On or about September 30, 1998, the Board issued Clinical Nurse Specialist Certificate Number 512 to Respondent. The Certificate expires on March 31, 2011, unless renewed.

JURISDICTION

5. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

6. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

7. Section 2764 states, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

8. Section 482 of the Code provides, in pertinent part, that the Board shall develop criteria to evaluate the rehabilitation of a person when considering suspension or revocation of a license, and that the Board shall take into account all competent evidence of rehabilitation furnished by the licensee.

9. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

10. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the

1 ground that the applicant or the licensee has been convicted of a crime substantially related to the
2 qualifications, functions, and duties of the licensee in question, the record of conviction of the
3 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
4 and the board may inquire into the circumstances surrounding the commission of the crime in
5 order to fix the degree of discipline or to determine if the conviction is substantially related to the
6 qualifications, functions, and duties of the licensee in question.

7 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
8 'registration.'"

9 11. Section 2761 of the Code states, in pertinent part:

10 "The board may take disciplinary action against a certified or licensed nurse or deny an
11 application for a certificate or license for any of the following:

12 ""

13 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

14 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
15 violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice
16 Act] or regulations adopted pursuant to it.

17 ""

18 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
19 functions, and duties of a registered nurse, in which event the record of the conviction shall be
20 conclusive evidence thereof.

21 ""

22 12. Section 2762 of the Code states, in pertinent part:

23 "In addition to other acts constituting unprofessional conduct within the meaning of this
24 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
25 chapter to do any of the following:

26 ""

27 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
28 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in

1 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
2 himself or herself, any other person, or the public or to the extent that such use impairs his or her
3 ability to conduct with safety to the public the practice authorized by his or her license.

4 "(c) Be convicted of a criminal offense involving the prescription, consumption, or
5 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
6 or the possession of, or falsification of a record pertaining to, the substances described in
7 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
8 thereof.

9 "...."

10 13. Section 2765 states, in pertinent part, that a plea or verdict of guilty or a conviction
11 following a plea of nolo contendere made to a charge substantially related to the qualifications,
12 functions and duties of a registered nurse is deemed to be a conviction within the meaning of this
13 article.

14 REGULATORY PROVISIONS

15 14. California Code of Regulations, Title 16, section 1444 (Regulation), states, in
16 pertinent part:

17 "A conviction or act shall be considered to be substantially related to the qualifications,
18 functions or duties of a registered nurse if to a substantial degree it evidences the present or
19 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
20 safety, or welfare. Such convictions or acts shall include but not be limited to the following:

21 "...."

22 "(d) Any conviction or act subject to an order of registration pursuant to
23 Section 290 of the Penal Code."

24 15. California Code of Regulations, Title 16, Section 1445 states, in pertinent part:

25 "...."

26 "(b) When considering the suspension or revocation of a license on the
27 Grounds that a registered nurse has been convicted of a crime, the board, in evaluating
28 the rehabilitation of such person and his/her eligibility for a license will consider

1 the following criteria:

- 2 (1) Nature and severity of the act(s) or offense(s).
- 3 (2) Total criminal record.
- 4 (3) The time that has elapsed since commission of the act(s) or
5 offenses(s).
- 6 (4) Whether the licensee has complied with any terms of parole,
7 probation, restitution or any other sanctions lawfully imposed against the
8 licensee.
- 9 (5) If applicable, evidence of expungement proceedings pursuant
10 to Section 1203.4 of the Penal Code.
- 11 (6) Evidence, if any, of rehabilitation submitted by the licensee.

12 COST RECOVERY

13 16. Section 125.3 of the Code provides, in pertinent part, that the Board may request
14 the administrative law judge to direct a licensee found to have committed a violation or
15 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
16 and enforcement of the case.

17 FIRST CAUSE FOR DISCIPLINE

18 (January 28, 2008, Criminal Conviction for DUI on September 7, 2007)

19 17. Respondent is subject to disciplinary action under sections 490 and 2761(f) in that
20 she was convicted of a crime that was substantially related to the qualifications, functions, and
21 duties of a registered nurse. The circumstances are as follows:

22 18. On or about September 7, 2007, around 10 p.m., Newport Beach Police
23 Department Officer R. Johnson received a report of a hit and run non-injury traffic collision
24 which occurred at approximately 9:55 p.m. The report indicated that the parties were refusing to
25 exchange information, and one party fled the scene. Officer Johnson proceeded to Respondent's
26 residence located at 3 Coastal Oak in Newport Beach, as a records check revealed that
27 Respondent was the owner of the vehicle which fled the scene.

28 19. Respondent told Officer Johnson that she was involved in a traffic collision. She

1 said that she thought she had a green light when she made a right turn. She said that she initially
2 pulled over to exchange information with the driver of the other vehicle, but left because the other
3 driver was "mean" and because she believed she did not collide with the other vehicle.

4 20. Officer Johnson looked at Respondent's vehicle, and it appeared to have recent
5 minor left front collision damage. Officer Johnson observed that Respondent had a moderate
6 odor of alcoholic beverage on her breath and person, and her breath was slurred. Her eyes were
7 also bloodshot and watery and she was unsteady on her feet. Respondent did not perform the
8 Field Sobriety Tests as demonstrated by Officer Johnson. Respondent elected to have a blood test
9 taken to determine her level of blood alcohol content. The tests revealed a .19% blood alcohol
10 content.

11 21. On or about January 28, 2008, in *People of the State of California v. Linda*
12 *Destefano*, Orange County Superior Court Case No. 07HM07651, Respondent pled guilty to a
13 violation of Vehicle Code section 23152(a) (Ct. 1, driving while under the influence of alcohol).
14 Count 2 (Vehicle Code section 23152(b) – driving with a blood alcohol content of 0.08% or
15 more) was dismissed, and Count 3 (Vehicle Code section 20002(a) – hit and run) was dismissed
16 with a *People v. Harvey* waiver. Respondent also admitted the allegations that her blood alcohol
17 content was more than .15% pursuant to Vehicle Code section 23578.

18 22. Respondent was sentenced on January 28, 2008. She was placed on three (3) years
19 informal probation, and conditions of probation included fines and fees, and an order not to drive
20 with a measurable amount of alcohol or drugs or without a valid driver's license in her possession
21 or without proof of valid auto liability insurance. She was also ordered to attend and successfully
22 complete a 6-month Level 2 First Offender Alcohol Program and Mothers Against Drunk Driving
23 Victim's Impact Panel. In addition, she was not to drive a motor vehicle with a measurable
24 amount of alcohol or drugs in her blood and submit to a chemical test of blood, breath, or urine on
25 demand by any police or probation officer.

26 SECOND CAUSE FOR DISCIPLINE

27 (Unprofessional Conduct – Use of Alcohol in a Dangerous Manner)

28 23. Respondent is subject to disciplinary action under sections 2761(a) and 2762(b) in

1 that she used alcoholic beverages in a manner dangerous or injurious to herself and the public, as
2 described above in paragraphs 18-22, inclusive.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Violation of Board Statutes or Regulations)**

5 24. Respondent is subject to disciplinary action under section 2761(d) in that she
6 violated the Board's statutes as described above in paragraphs 18-22, inclusive.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board of Registered Nursing issue a decision:

- 10 1. Revoking or suspending Registered Nurse License Number 389381, issued to
11 Linda Destefano;
- 12 2. Revoking or suspending Nurse Practitioner Certificate Number 9775, issued to
13 Linda Destefano;
- 14 3. Revoking or suspending Clinical Nurse Specialist Certificate Number 512, issued to
15 Linda Destefano;
- 16 4. Ordering Linda Destefano to pay the Board of Registered Nursing the reasonable
17 costs of the investigation and enforcement of this case, pursuant to Business and Professions
18 Code section 125.3; and
- 19 5. Taking such other and further action as deemed necessary and proper.
- 20
21

22 DATED: 7/15/10

23 *Louise R. Bailey*
24 LOUISE R. BAILEY, M.ED., RN
25 Interim Executive Officer
26 Board of Registered Nursing
27 Department of Consumer Affairs
28 State of California
Complainant

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